



2643/210

Serial No.: 09/650,335

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND PATENT INTERFERENCES

In re U.S. application of: Jeffrey A. Giacomel

U.S. Serial No.: 09/650,335

Filed: August 28, 2000

Group Art Unit: 3753

Examiner: A. Flanigan

For: FOOD PREPARATION AND STORAGE DEVICE

Commissioner for
Patents
PO Box 1450
Alexandria, VA. 22313-1450

Dear Sir:

SUPPLEMENTAL REPLY BRIEF ON APPEAL

CERTIFICATE OF MAILING
(37 CFR 1.8a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail and in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

Date: September 20, 2005

William R Gustavson

(Typed name of person mailing
paper)

(Signature of person mailing
paper)

This Supplemental Reply Brief is filed in furtherance of the Appeal filed in this application on February 17, 2005 and in reply to the Supplemental Examiner's Answer mailed on July 20, 2005.

A. The Examiner's argument that Snyder shows an aluminum cooking apparatus with parallel ridges 310 is Respectfully Challenged

The Examiner states it is a fair and descriptive characterization by the Examiner to state that "Snyder shows an aluminum cooking apparatus with parallel ridges 310." Applicant respectfully disagrees. As clearly stated at Column 7, line 26 of Snyder, Snyder identifies "item" 310 as a singular grid, not plural parallel ridges.

The Examiner's discussion that Snyder states that grid 310 is identical to grid 10 at Column 7, lines 26-27, and that Snyder states that grid 10 has "upwardly extending peaks such as parallel rails 10R, which rails are separated by a series of valleys constituted by parallel channels 10C" at Column 5, lines 1-4 is noted. However, this does not transform a singular item, grid 310, into a plurality of parallel ridges 310.

Applicant does not understand the Examiner's argument that "[o]ne could be explicit in using the term 'grid' employed in Snyder to state 'Snyder shows an aluminum cooking grid with parallel ridges 310.'" A statement that "Snyder shows an aluminum cooking grid 310 with parallel ridges" would make more sense. In either event, this discussion does not change the fact that the design of Snyder is governed by its need to funnel away grease from the cooking meat in the channels 10C. The design could not practically be used in the same way as the claimed invention as the grid 310 of Snyder could not be placed in a mass of product without both the "ridges" and base of grid 310 simultaneously being placed in the product.

B. The Examiner's argument that Applicant has not clearly set forth a definition of a term that is different from its ordinary and customary meaning is respectfully challenged

The Examiner has stated that Applicant has failed to clearly set forth a definition of a term that is different from its ordinary and customary meaning, and that this must be done with reasonable clarity, deliberateness and precision with regard to the term "length" in claims 31 and 35. Reference to those claims show the length referred to is the length of the input heat transfer elements. This exactly agrees with the recitation on page 12, lines 25-28 of the specification that recites the length of the fins 106a, 106b and 106c, which are examples of the claimed input heat transfer elements. Thus, Applicant believes it is clear from the disclosure that the length in claims 31 and 35 refers to a dimension of the fins.

The Examiner cites use in the specification of the term "length" on Page 11, lines 9-11 as contradictory. This text recites one possible manner of manufacturing the apparatus by extrusion. It is noted that a continuous extrusion can be cut to a desired length. However, it is clear that this is referring to the length of the entire unit, not the length of the input heat transfer elements such

as fins 106. Interestingly, the Federal Circuit en banc recently emphasized the need to look to the specification to find the meaning of words in the claims over a simple dictionary definition in Phillips v. AWH Corp.


Thus, Applicant believes the specification and claims are clear that the length set forth in claims 31 and 35 is that dimension that extends away from the output heat transfer element and thus into the mass of product.

C. The Examiner's argument that Reed has a removable handle is respectfully challenged

The Examiner states that Reed has a "clear showing of the handle assembly being removably provided as shown in Figs. 10 and 13-15 and described in columns 7-8 of Reed". In the Examiner's Answer, the Examiner refers to handle 43 of Reed and Applicant assumes that this is the handle that the Examiner contends is removable. Handle 43 is only a part in a device 30. Handle 43 is clearly attached to plungers 41 and spring loaded relative lower handle 43 by coil springs 42. The Reed patent does not state the handle 43 is removable from plungers 41 nor is there any reason in the operation of the Reed device to do so. In fact, handle 43 is used to move ribs 32 downward to eject the hamburger patties 19 impaled and held on projecting grills 22 as set forth at Column 7, line 61 to Column 8, line 11.

The Examiner notes the Abstract of Reed states "[a] device with a handle is provided for releasably engaging the cooking apparatus". This does not prove the handle 43 is removable from the device, only that the device having handle 43 is releasably engaging the cooking apparatus.

Respectfully Submitted,
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